Lim Chui Ngor, the daughter of Lim Ah Kow, as the granddaughter of Lim Chye Inn and to Lim Ah Kow as the son of Lim Chye Inn. I agree with Ambrose J.

In the course of his submission to the Court Mr. S.H.D. Elias says that "it does not appear from the said judgments that any question was raised or considered as to whether the fact that Lim Ah Kow had been adopted by Lim Geok Chai and was described in the will as Lim Geok Chai's son affected the kin relationship of Lim Ah Kow to Lim Chye Inn for the purposes of devolution of interests under the will." I agree that this question was not specifically put in so many words to the Courts in the three Originating Summonses. But the fact that Lim Ah Kow had been adopted was before all the three judges. Terrell Acting C.J. held that the 20 shares went to the children of Lim Chye Inn. On this basis 5 shares went to each of the four children. Brown J. dealt with the 5 shares of Chng Kim Soh (f) and not the 20/3 shares which would have been her share had Lim Ah Kow been excluded and had the 20 shares been divided equally between the other three of the children. In my view Brown J. was fully aware that the 20 shares had been divided equally between the four children. Again Ambrose J. in my view was fully aware that in the first instance the 20 shares of Lim Chye Inn was divided amongst her four children equally for he was called upon to pronounce on the 10 shares which had devolved on Chng Phee Lam through his two children, Chng Kim Soh (f) and Chng Ah Dek. This being so, I do not believe that at this stage of the administration of the Estate which has been largely based on judicial decisions, I have any choice but to say that the 15 of 95 shares allocated to Chng Kiat Leng were properly allocated under Clause 6 of the will.

Coming back to the questions raised in this Summons I agree with the submission of Mr. Eric Choa, counsel for the 2nd defendant. I hold that Lim Boon Pin (1st defendant) is neither a blood relation of Chng Kiat Leng nor is he a stirp or direct descendant of Lim Chye Inn (f). He therefore cannot succeed to the said 15 shares or any part thereof. I hold that Lim Chui Ngor (f) is clearly a blood relation of Chng Kiat Leng (being the daughter of Chng Kiat Leng's real brother Lim Ah Kow and at the same time a lineal descendant (a stirp) of Lim Chye Inn, the original legatee).

I therefore declare that in the events that have happened and on the death of the said Chng Kiat Leng, his 15 shares in the residuary trust fund of the testator passed to his niece Lim Chui Ngor (f). And in so declaring I am comforted that Mr. S.H. D. Elias, counsel for the trustees, does not disagree with me.

And last, but not least, I am obliged to all four counsel for their useful written submissions.

Court: On question of costs, costs of all parties to be taxed as between solicitor and client and paid out of the income accumulated or otherwise related to the 15 shares adjudicated upon by this Summons. No part of the corpus is to be utilised for the payment without reference to court. Liberty to apply.

Order accordingly.

Solicitors : *Allen & Gledhill; Donaldson & Burkinshaw; S.T. Kay & Co.; Lee & Lee.*

CLEMCO INTERNATIONAL SALES CO. v. ROSEMARK LTD. & ANOR.

[O.C.J. (Rajah J.) April 3, 1986]
[Singapore – Suit No. 3742 of 1980]

Contract Law – Management Agreement between main company and first defendant – Employment Agreement between main company and second defendant – Terms of payment – Transfer of funds by second defendant – Dispute – Claim by plaintiffs – Counterclaims by both defendants.

The plaintiff company ("the Branch Company") is the registered branch in Singapore of an American company incorporated in the State of Nevada but with headquarters in California ("the Main Company"). The Branch Company was engaged in selling and servicing in South East Asia and elsewhere the machinery and equipment manufactured by its parent company in the United States. The Main Company is a subsidiary of Clemco International Incorporated, an American company incorporated in the State of Delaware. The first defendant ("Rosemark") is a Hong Kong company. The second defendant ("Hawkins") was recruited in Singapore into the service of the Main Company under an Employment Agreement dated December 15, 1975, for a period of one year. His employment was not terminated prior to its expiration on January 15, 1978, and his employment continued on a month to month basis on agreed monthly salary, with bonus to be approved or determined by the Board of the Main Company. On January 1, 1979, Rosemark entered into a management agreement whereby the Main Company engaged Rosemark as an independent contractor to provide, on payment of agreed sums, management and administrative services for the Branch Company.

Dispute arose between the parties when on or about February 14, 1980 Hawkins caused the sum of $42,000.00 to be transferred from the plaintiffs' current account in Singapore to Rosemark's account with the Bank of America in Hong Kong. The plaintiffs say that this was done without their knowledge, authority or consent and that Rosemark was not entitled to the said sum of $42,000.00. They claim against Rosemark and/or Hawkins for the return of the $42,000,00 and interest thereon. Both defendants denied the claim and made counterclaims against the plaintiffs.

Held: (1) the defences of both the defendants are rejected and the plaintiffs' claim is allowed;

(2) the first defendant's claim is allowed to the extent of $7,470.47;

(3) the second defendant's claim is allowed in the sums of $28,583.31 and $2,990.00;

(4) in the result, judgment is entered against the first defendant in the sum of $34,529.53 and against the second defendant $10,426.69, with no order as to costs.

CIVIL SUIT.

Cheong Tuck Meng for the plaintiffs.

George Fong for the first and second defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiff company (the Branch Company) is, the registered branch in Singapore of a company, incorporated in the State of Nevada, U.S.A. but with headquarters in San Francisco, California (the Main Company). The Branch Company was engaged since 1976 in selling and servicing in South East Asia and elsewhere the machinery and equipment manufactured by its parent company in the States. The Main Company is a subsidiary of Clemco International Incorporated (the Parent Company) which is incorporated in the State of Delaware, U.S.A. The Parent Company is not registered in Singapore. The Main Company has a number of branches throughout the world and its branches are managed either directly by its own employees, or, as is claimed in the case of the Branch Company, by an independent company which provides managerial personnel.

The 2nd defendant (Hawkins) was recruited in Singapore into the service of the Main Company. He was employed under an Employment Agreement dated December 15, 1975 (AB3-11) between the Main Company and himself for a period of one year commencing January 15, 1976 and ending on January 15, 1977 as regional sales manager for the territories of Singapore, Malaysia, Indonesia, Philippines, Thailand, Taiwan, Japan, Hong Kong, Macau and Guam. His salary agreed at US$27,500/– per year was paid every month by the Main Company into his bank account in Tennessee, U.S.A. In addition to his salary there is a provision under Clause 5 of the Employment Agreement for payment of bonuses to him to the extent approved or determined from time to time by the Board of Directors of the Main Company. In fact Hawkins was never paid nor had he for that matter ever paid himself any salary from the Singapore account of the Branch Company.

His employment was not terminated prior to its designated expiration on January 15, 1978 and so his employment with the Main Company, by virtue of Clause 3(d) thereof, continued on a month to month basis upon the same terms and conditions as stated therein. His monthly salary at the end of the fiscal year 1978 was US$2,666.66.

The 1st defendant, Rosemark Ltd (Rosemark) is a Hong Kong company and it was incorporated on December 28, 1978 (PB12). The shares in Rosemark were held by a company registered in the New Hebrides and by a nominee company in Hong Kong. No individuals were named in the share register. There were two directors of the company, one of whom was resident in Hong Kong and the other Hawkins was stationed in Singapore. At the beginning of 1979 Rosemark did very little, if any, business either in Hong Kong or in Singapore.

On January 1, 1979 the Main Company and Rosemark entered into a Management Agreement (AB16-18) whereby the Main Company engaged Rosemark as an independent contractor to provide management and administrative services for the Branch Company as agreed therein from January 1, 1979 and it was to continue on a year to year basis, with either party being able to terminate the agreement upon 30 days' written notice to the other. In consideration of the management services so provided the Main Company was to pay Rosemark "a monthly base sum of S$6,666.66 (six thousand, six hundred and sixty-six dollars and sixty-six cents) and an annual incentive payment determined by achievement of the performance criteria set forth on Exhibit 'A' attached" thereto. At the time the Management Agreement was signed by the parties thereto it would appear that Exhibit 'A' had not in fact been attached to it for the reason that the incentive plan had not been approved by the Board of Directors until sometime during the second half of 1979. It was further provided therein that upon renewal of the

Agreement by the parties for an additional year, the Main Company was to pay Rosemark a renewal fee of S$5,000/– which was to be paid "within thirty (30) days after the parties indicate consent to continue the Agreement" (Clause 8).

At all material times Hawkins was both an authorised signatory to the plaintiffs' current account with the Bank of America in Singapore as well as a director of Rosemark.

All managers working for the Main Company could under their terms of employment get bonuses based on profitability, on performance and on other objectives that would have been set by the Board of Directors. As to how much the Board would pay each manager would also depend on the profits of the group as a whole. During the three years of his employment period from 1976 to 1978 Hawkins received only one bonus payment for 1977 based on his 1977 performance. It was common ground that the payment of bonuses to managers of the Main Company was entirely on a voluntary basis and at the discretion of the Board of Directors and it was not on an obligatory contractual basis, as indeed the Incentive Plan under the Clemco International Incentive Program was to become.

The Clemco International Incentive Program (AB20-37) was approved by the Board of Directors at their meeting in San Francisco on May 2, 1979 for implementation in the fiscal year 1980 (AB33). Hawkins was one of the nine managers to come under the incentive program for the fiscal year 1980 (AB34). In the words of the Incentive Program (AB20):

> "The purpose of the Clemco International, Inc. and subsidiary incentive plan is to align the goals of management with those of the shareholders. The plan is also designed to provide a monetary incentive to the managers based on the attainment of profit as well as other management/shareholder objectives.
>
> The plan is intended to contain the entire system of performance remuneration to the management of Clemco Compensation Committee and I had to confirm them by ments. *This system therefore supersedes, for those covered, any merit salary increases, commissions or bonus payments.*

(Emphasis mine).

> The plan is therefore the only approved system of monetary motivation by the compensation committee and the Board of Directors and is designed for rewarding exceptional performance.
>
> This plan is intended to cover, in its initial stages, all managers of Clemco International, Inc. and its wholly owned subsidiaries with line management (operating profit) responsibility. Those covered are listed in exhibit 'A' of this document and subsequent updates of that exhibit as authorised by the president each November."

A Clemco Incentive Plan Contract for the fiscal year 1980 dated October 17, 1979 (PB3 2-34) was subject to terms and conditions entered into between the Main Company and Rosemark (the 1980 Incentive Plan). One of such terms and conditions reads:

> "Participants must be employed by a Clemco Company continuously for the full year of the plan to be eligible to receive an incentive payment for such year." (PB33).

In October 1979 no bonus payment to Hawkins for the first year 1979 had been decided upon by the Board of Directors. There were, however, discussions in Singapore on or about October 17, 1979 between Hawkins, Arnie Sallaberry (PW1) and Mark Cleary, President of the Main Company, regarding such a bonus payment to Hawkins. In this connection it must be noted that both PW1 and Mark Cleary were not members of the Board of Directors and that it was for the Board and the Board alone to decide on payment of bonuses to managers and, if so decided, the respective amounts to be paid. Hawkins says that during the said discussions at Singapore he had told PW1 and Mark Cleary that his bonus for the fiscal year 1979 should be at the rate of 10% on an estimated operating profit of $420,000/– for the fiscal year 1979. To this PW1 says that they, meaning he and Mark Cleary, did not agree as, indeed, he says, they could not have done as they had no power to agree or disagree on questions of bonus payments.

Eventually in November 1979 a bonus for Hawkins for the year 1979 of US$8,500/– was approved by the Board of Directors in San Francisco, subject to audit of accounts. Mark Cleary did not give evidence in court but there was available to the court his long letter to Hawkins dated April 3, 1980 (PB53-55) which, *inter alia*, reads:

> "I'm afraid some misunderstanding must have arisen with regard to the arbitrary bonus payment determined for fiscal 1979. I must admit I was quite surprised when Arnie advised me that you felt we had agreed upon a percentage of operating income figure for 1979. I'm sure I was quite sure, both in the Pacific Zone manager's meeting and in our subsequent meeting in Singapore, that any payments for 1979 were strictly arbitrary. Believe me, I recall this matter with extreme clarity because of the reaction of the managers to that fact. I am also extremely aware of

this facet because it was the primary reason I promoted a precontracted incentive level program with the Board of Directors. I felt that managers should know in advance of the year the criteria upon which a specific sum can be anticipated.

In any case, John, a 1979 bonus is, as in previous years, strictly arbitrary and a function of the Compensation Committee of the Board of Directors. For 1979, the Compensation Committee made the determination in November at the Board meeting that, should the profits of the Clemco International Sales Company Singapore Branch meet my expectations, then an arbitrary bonus of US$8,500 would be authorised to you in relation to your performance and that of the Singapore branch. All of the arbitrary bonuses determined at that meeting were subject to confirmation by the audit of the financial statements of the company.

Subsequently, you and I had a telephone discussion in which you asked if it would be possible to receive an advance on 1979's bonus. While I gave no indication, under instruction of the Compensation Committee of the amount of bonus, I did agree that in view of your immediate needs at that time I would authorise a release of the bonus payments upon receipt of operating unaudited figures for 1979. These figures subsequently were not received and no authorisation was therefore transmitted. I later learned that the reason the figures were not received was your immediate need was not as urgent.

Subsequent to this discussion, I learned that an incentive amount equal to 10% of the operating income was accrued in the Singapore branch records. I advised Arnie to discuss this matter with you in Singapore in that the total bonus authorised by the Board of Directors for accrual was US$8,500 and any amounts in excess of that figure must be reversed in the branch statement. At the same time, I was somewhat surprised as I thought the arbitrary nature of the 1979 bonus was made quite clear at our meeting in Singapore. In fact, we went so far as to increase your remuneration in that meeting and to broaden the potential of the 1980 incentive payment in response to your excellent performance in 1979. Both of these actions were exceeding the guidelines provided me by the Compensation Committee and I had to confirm them by telephone with the Compensation Committee prior to proposing them to you. I thought we had been extremely fair and, in fact, generous in that compromise.

Subsequently, I learned that the incentive amount that you had anticipated had not only been accrued but, in fact, paid out. I must admit I am extremely unhappy with this development. One of the major obstacles I was faced with overcoming in obtaining approval from the Board of Directors for a predetermined incentive plan, entailing a commitment by the company in non arbitrary fashion, was the concern of the Board that payments might be based on unaudited operating figures and without centralised authorisation and control. It would seem that your action in this case has justified the concern of these Board members. I only hope that at this stage your action has not jeopardized the overall incentive program and that the situation can be rectified as soon as possible."

In the event the company did not pay him the bonus of US$8,500/– for fiscal year 1979 as events overtook the payment.

On or about February 14, 1980 Hawkins caused the sum of $42,000/– to be transferred from the plaintiffs' current account in Singapore to Rosemark's account with the Bank of America in Hong Kong. The plaintiffs say that this was done without their knowledge, authority or consent and that Rosemark was in no way entitled to the said sum of S$42,000/–.

On May 15, 1980 (AB48) Rosemark addressed a letter to the plaintiffs as follows:

"Rosemark Ltd.
c/o Wilkinson & Grist
12th Floor, Wheelock Hse
Pedder Street
Hong Kong

May 15, 1980

Glemco International Sales Company
26 Jalan Terusan
Jurong Box 104
Singapore 22.

Gentlemen,

We hereby acknowledge receipt of S$42,000.00 paid to us by Mr. John G Hawkins, Jr. in your name, which sum was mistakenly paid without your prior written authority. In the circumstances we undertake and agree to repay the said sum of S$42,000.00 to you on or before June 30, 1980.

Yours faithfully,
Rosemark Ltd

Sgd: John G Hawkins Jr.
Title: Director

In consideration of your granting Rosemark Ltd indulgence to repay the said sum of S$42,000.00 as set out above, I, John G Hawkins, Jr., as shareholder and director of Rosemark Ltd., hereby personally guarantee said repayment by Rosemark Ltd.

Sgd: John G Hawkins, Jr."

Hawkins admits signing the said letter and giving the undertaking on behalf of Rosemark but, this he says he did under duress and/or undue influence of Sallaberry (PW1), Vice-President of the Main Company).

It is in these circumstances that the plaintiffs' claim against Rosemark and/or Hawkins for the return of the said S$42,000/– and interest thereon came about.

Counterclaims by 1st and 2nd Defendants

1st Defendant (Rosemark)

Rosemark's first claim against the plaintiffs is for the sum of S$8,166.66 and it says that, although under Clause 3 of the Management Agreement (AB16) it was entitled to 30 days' written notice of termination, its employment was terminated by the plaintiffs letter of June 6, 1980 (AB49) with immediate effect from that date (paras 12 and 13 of Counterclaim).

Rosemark's second claim is under Clause 8 of the Management Agreement (AB17) which reads:-

"8. Renewal Fee. In addition to the compensation provided for in Paragraph 7 above, Clemco shall pay to Rosemark a renewal fee of S$5,000.00 (Five Thousand Singapore Dollars) upon renewal of the agreement by the parties for an additional year. The renewal fee shall be paid within thirty (30) days after the parties indicate consent to continue the Agreement."

It says that in breach of the said Clause 8 the plaintiffs have to date failed or neglected to pay the renewal fee of S$5,000/– so payable in respect of the additional year 1980 and that it should have been paid the said sum not later than January 1980. It is not disputed that this sum of S$5000/– has not as yet been paid although Rosemark continued to work for the plaintiffs under the Management until June 6, 1980 (para 14 of Counterclaim).

Rosemark's third claim is made under the 1980. It is not disputed that this sum of S$5,000/– Rosemark entered into an agreement that the incentive payment for the fiscal year 1980 was to be a sum equivalent to 10% of the net operating profit in Singapore and the Far East for the fiscal year 1980 or the sum of S$37,400/– whichever be the higher (para 15 of Counterclaim).

Rosemark's fourth claim against the plaintiffs is that by reason of the said letter of June 6, 1980 it was prevented from earning the incentive provided for by the 1980 Incentive Plan (PB32-34) and has thereby suffered loss and damage (para 16 of Counterclaim).

Rosemark's fifth claim against the plaintiffs is for reimbursement, under Clause 6(c) of the Management Agreement, of the sum of $2,682.97 being monies paid by it in the performance of its duties for and on behalf of the plaintiffs (para 17 of the Counterclaim).

2nd Defendant (Hawkins)

Hawkins alleges that:–

(1) his Employment Agreement ran side by side with the Management Agreement,

(2) the Management Agreement did not *ipso facto* terminate his Employment Agreement,

(3) his Employment Agreement was terminated by the plaintiffs only on June 10, 1980 (AB56),

(4) that under Clause 16 of the Employment Agreement it has to be construed in accordance with the laws of the State of California U.S.A. and that under such laws he is entitled to be paid (a) S$28,583.11, being 14 weeks untaken leave at S$8,166.66 per month and (b) S$2,990.60 being the cost of his return air ticket to his home town in the United States on termination of his contract of employment.

Plaintiffs Claim for S$42,000 against the 1st Defendant and/or the 2nd Defendant

As against Rosemark the plaintiffs say that Rosemark was not entitled to receive from Hawkins the said sum of S$42,000/– and that in the premises Rosemark has had and has received the said sum to the use of the plaintiffs. As against Hawkins the plaintiffs say that he did not have their authority or consent to pay the said sum to Rosemark and claim the return of the said sum.

The defendants' defence on the plaintiffs' claim is:–

(1) that the payment of S$42,000/– to Rosemark by Hawkins was made pursuant to Clause 7 of the Management Agreement;

(2) alternatively that the said payment was made pursuant to an oral agreement (the 1979 Oral Incentive Plan) arrived at a meeting held in Singapore at which were present Hawkins, Arnie Sallaberry and Mark Cleary and at which meeting it was agreed that the incentive payment to Rosemark for the year commencing January 1, 1979 was to be 10% of the plaintiffs' operating income for the fiscal year 1979 estimated at S$420,000/– or thereabouts, and

(3) that in respect of either of these two instances the payment was effected by Hawkins to Rosemark with the plaintiffs' knowledge, consent and/or authorisation.

Rosemark for itself in its defence says that the said payment was made pursuant to the Manage-

ment Agreement and/or the 1979 Oral Incentive Plan with the plaintiffs' consent and/or authorisation (para. 6 of Amended Defence and Counterclaim).

On the issue of the so-called 1979 Oral Incentive Plan I accept the evidence of Arnie Sallaberry which is supported by the letter of Mark Cleary to Hawkins dated April 3, 1980 (PB53-55). On the evidence before me I am satisfied that there was no oral agreement as alleged by Hawkins entered into between the Main Company and Rosemark and/or Hawkins on October 17, 1979 in Singapore. In any event the Incentive Scheme only came into effect as from the fiscal year 1980. The Clemco International Incentive Program "was approved by the Board of Directors at their meeting in San Francisco on May 2, 1979 for implementation in fiscal year 1980" (AB33). Exhibit "A" attached to said Program (AB34) sets out the names of Mark Cleary, Sallaberry and Hawkins as managers eligible for inclusion in the incentive program for fiscal year 1980 with maximum incentives shown as a percentage of salary.

The defence of payment of the said sum of S$42,000/– to Rosemark as an incentive payment is therefore rejected.

This leaves the question of whether the said payment was a voluntary bonus payment to Hawkins for the fiscal year 1979. Here again I accept the evidence of Arnie Sallaberry and the said letter of Mark Cleary as setting out the correct position. Subject to audit the bonus for Hawkins for 1979 as authorised by the Board of Directors was US$8,500/–. In any event the plaintiffs never at any time consented or authorised payment of the said sum of S$42,000/– to Rosemark or to Hawkins. This is borne out by the letter dated May 15, 1980 addressed to and signed by Hawkins as Director of Rosemark undertaking and agreeing to repay to the plaintiffs the said sum of S$42,000/–.

On the letter of acknowledgement (AB48) I accept the evidence of PW1 as to how and why it was given. Hawkins' contention that it was obtained by duress or undue influence after a convivial dinner is rejected.

The defendants' defence and that of Rosemark for itself on the plaintiffs' claim are rejected and I find for the plaintiffs against the 1st and 2nd defendants as claimed.

1st Defendants' Counterclaim

1st Claim – The plaintiffs' answer to this was that the notice of termination was not under Clause 3 of the Management Agreement (AB16) but under Clause 10 (termination for cause). They say that Rosemark was interfering with the proper performance of the Agreement by preferring its own interests at plaintiffs' expense and has therefore violated the said Agreement. I accept the plaintiffs' oral and documentary evidence on this matter and hold that the plaintiffs properly terminated, under Clause 10 the said Agreement, the services of Rosemark. This claim is therefore rejected.

2nd Claim – On renewal fee I accept the basis of Rosemark's claim against the plaintiffs and reject plaintiffs' evidence that this fee was utilised for the payment by the plaintiffs of a round the world trip for Hawkins. I find for Rosemark in the sum claimed, S$5,000/–.

3rd Claim – I reject this minimum claim for S$37,400/– made under the 1980 Incentive Plan (PB32-34) as it relates to the fiscal year 1980 and is conditioned for payment only on continued employment for the full fiscal year 1980 (PB33). Rosemark's employment, as is known, was terminated for cause by the plaintiffs on June 6, 1980.

4th Claim – is rejected for the reason that the 1st defendants' services was properly terminated under Clause 10 of the Management Agreement (AB18).

5th Claim – I disallow the cable charges for $212.50. I am not satisfied on the evidence before me that it was incurred on the plaintiffs' behalf. On the insurance payments I am satisfied that they were made by Rosemark on the plaintiffs' behalf. See Invoice No H0012 dated April 8, 1980 (DB2), a month before Rosemark's services were terminated for cause. On this claim I allow the sum of $2,470.47.

2nd Defendant's Counterclaim

Hawkins' claim is under two heads, one for vacation periods not utilised by him in the sum of S$28,583.13 and the other for his return fare to Chattanooga, Tennessee, in the sum of S$2,990/–.

From the documents before me it is clear that in spite of the Management Agreement dated

January 1, 1979 the Main Company in San Francisco considered Hawkins as its employee. The Clemco International Incentive Program which was formulated during the second half of 1979 (AB 20-37) treats Hawkins as an employee of the Main Company (AB34). Again the Clemco Incentive Plan contract dated October 17, 1979 (PB32) treats Hawkins as the employee of the Main Company whose employment with it had commenced on January 15, 1976. For these reasons I find that Hawkins was in the employment of the Main Company when his contract was terminated in June 1980.

In connection with the first head of Hawkins' claim, one has to keep in mind two matters. The first one is paragraph 2 of a letter written by Mark Cleary to Hawkins on November 24, 1975 (AB2) which reads:

"1. As discussed, the vacation period mentioned in Paragraph 7 of the contract, in your case will be three weeks of the first year, and from the second year forward, will consist of four weeks. After three years, the Company will pay one month's home leave consisting of return air fare from Singapore to the United States, be it Chattanooga or any other point that you designate in the U S."

The other one is Clause 6 of the Employment Agreement (AB8) which reads:

"This Agreement shall be construed in accordance with the laws of the State of California, United States of America."

It is not disputed that at the time when Hawkins service was terminated in June 1980 he was in receipt of a salary of S$8166.66 per month and that 14 weeks leave had not been taken by him. On the evidence of Theodore Harper (DW3) who gave expert evidence on Californian law on matters connected with employment I accept as a fact that in California leave accrues on a vested basis from day to day and consequently can be accumulated from year to year and from day to day until terminated. Having so found on the facts, I find that Hawkins succeeds on this claim of S$28,583.31.

Again in connection with the second head of Hawkins' claim one has to read his Employment Agreement together with Mark Cleary's said letter of November 24, 1975 to Hawkins (AB2). On so doing it seems to me that, although Hawkins was recruited in Singapore, he was to be treated and was, indeed, treated as if he had been recruited in the States. This being so there is to be implied in the contract of employment a term that even if his services were terminated for cause he would be repatriated at the employers' expense. The plaintiffs suggest that as Hawkins has local interests he is not entitled to or has forfeited his return air fare. There was, however, no such evidence before me. I therefore allow Hawkins his claim for a return air fare to Chattanooga, Tennessee, in the sum of S$2,990/—.

There will therefore be Judgment against the 1st defendants in the sum of $34,529.53 and against the 2nd defendant in the sum of $10,426.69. In the circumstances of this case I make no order as to costs both on the claim and the counterclaims.

Claim allowed.

Solicitors: *Cheong & Cheong; Godwin & Co.*

JOO YEE HOLDINGS PTE. LTD. v. BOEY KUN HONG & ORS.

[O.C.J. (Chua J.) April 9, 1986]

[Singapore – Originating Summons No. 933 of 1984]

Contract – Option – Purchase of entire paid-up shares in company owning 3 parcels of land – Application for redevelopment approved – Alienation of State land – Warranties by defendants – Increase in premium and stamp duty – Whether defendants liable to pay.

Contract – Option – Purchase of shares subject to unqualified warranties – Breach of warranties – Increase in premium – Whether defendants liable to pay.

The principal issue in this case was whether the defendants had any basis to resist the plaintiffs' claim for the sums of $545,200 and $16,364 as the differences in the premium and stamp duty respectively payable for the alienation of State land. The computation of the revised premium showed that it was based on an area of 485.6 sq.m., an increase of 20.2 sq.m.

The defendants executed on February 19, 1981, a written option for the purchase by the plaintiffs of the entire paid-up 2.5 million shares in Natwest Development (Pte) Ltd. (Natwest) at a price of $50 million. The plaintiffs exercised the option and paid in accordance with the agreed terms the full purchase price for the said shares. At the time the said option was given, Natwest was represented *inter alia* to own three parcels of land, the approximate area of which is 5009.5 sq. ft. or 465.4 sq.m. (subject to survey). The three parcels of land represented the only substantial assets of Natwest and in principle planning approval had been obtained from the relevant authorities for a comprehensive development of these three parcels of land (the project land). The defendants applied to the Commissioner of Lands for a change in the nature of the re-development from a 19-storey banking hall cum hotel